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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,815	10/17/2003	Emma A. Durand	009554-0306194	8788

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/686,815
Filing Date: October 17, 2003
Appellant(s): DURAND ET AL.

MAILED

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GROUP 3600

Emily Bell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 4, 2006 appealing from the Office action mailed May 4, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6145243	Wigton et al.	11/2000
6443434	Prather	9/2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-31 and 42 are rejected under 35 USC 103 as being obvious over Wigton in view of Prather.

Claims 32-41 are rejected under 35 USC 103 as being obvious over Wigton.

(10) Response to Argument

Applicant argues that the phrase "consisting essentially of" precludes the application of the Wigton reference which also includes carbon dioxide in the outflow in addition to an attractant and air sucked into the device. It should be pointed out that "ambient air" contains nitrogen, oxygen, carbon dioxide, and many other gases in small amounts such as ozone. The concentration of ozone, for example, can change from day to day and even hour to hour depending sunlight, temperature, and pollutants. In the same manner, carbon dioxide levels can vary from time to time and place to place. The ambient air at the outflow of the Wigton device would resemble ambient air from near a mammals mouth since there would be more carbon dioxide in the air at this point. However, this is still considered as ambient air and would not materially affect the basic and novel characteristics of the claimed invention. Also, the air in the outflow just outside of the outlet of the Wigton device is ambient air noting that the concentrations of several of the components in air can change with time and the air is still considered as ambient air. Applicant argues that the references do not teach a flow of the outflow through the receptacle. Wigton shows a trap for flying insects having an attractant 134 as shown in Fig. 3. See column 9, lines 11-16. The attractant is contained in a small

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open vial. Inherently, a small fraction of the air flow generated by the fan will flow into and out of the vial in addition to the evaporating compound diffusing into the atmosphere of either enclosure 16 or 18 and subsequent diffusion out of the apparatus. Since air flows into and out of the vial, the air can be considered to flow "through" the vial. Applicant argues the reference do not teach a solid or semi-solid diffusible insect attractant. However, Wigton states that the attractant is a volatile insect attractant and since solids and semi-solids (more correctly referred to as a gel) both have some degree of being volatile, that is, they have some vapor pressure, Wigton envisions or does not preclude the use of a solid or semi-solid insect attractant. As to the adjustable openings, to operate the insect trap, applicant does not require an adjustable opening, but it is recognized that an adjustable opening is desired for the purpose of maintaining the same level of attractant in the outflow by increasing the size of the opening as the amount of attractant decreases with time to yield a similar concentration in the outflow. As to the heater for the supply of solid or semi-solid attractant, Prather shows a heater to help diffuse the attractant, and the use of an encircling heater or a heater positioned within the bore of the insect attractant would only involve routine skill in the art since merely the shape of the heater would be changed and the function of the heater would be the same.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art.

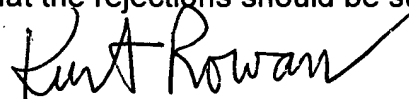
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

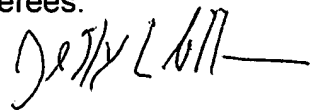
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KR


KURT ROWAN
PRIMARY EXAMINER
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Conferees:

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FP 